HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1213 of 2004 (SS)

Mohan Singh Saini s/o Sri Gainda Singh r/o Premi House Bhawani Ganj, Ramnagar, District Nainital
..... Petitioner

versus

1. State of Uttaranchal through Secretary Ministry of Home, Uttaranchal, Dehradun
2. Additional Director General of Home Guard, Police Headquarter, Dehradun
3. Regional Commandant, Home Guards Kumaun Mandal, Nainital
4. Regional Commandant Home Guards Garhwal Mandal Srinagar, District Pauri Garhwal
5. District Commandant Home Guards Haldwani, District Nainital ..... Respondents

Sri Asif Ali & Dinesh Chauhan, Advocate for the petitioners.
Standing Counsel for the respondents.

Dated: 25.8.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 23.1.2004 passed by the respondent no. 5.

Briefly stated the petitioner was appointed initially on 2.5.1996 as Honorary Platoon Commander under section 7(2) of U.P. Home Guard Act, 1963 for a period of 3 years. The terms of his service was extended for three years from time to time. Lastly the petitioner was appointed on 1.10.2002 as Company Commander, Home Guard Gramin Company, Ramnagar.

According to the petitioner in January 2004, he along with other Home Guards discharged duty at Kumbh Mela, Haridwar. They were assured by the authorities concerned that they will be paid daily allowance of Rs.40/-. News to this effect was published in News Paper, Amar Ujala and as such the authorities concerned have become annoyed form the petitioner and other persons. The respondent no. 5 without any notice and without assigning any reason passed the order terminating the services of the petitioner.

Respondents have filed counter affidavit and have submitted that earlier the petitioner was Vice President of All India Home Guards Association and he instigated voluntary Home Guards to go on strike in District Nainital. The petitioner thereafter submitted in writing before the then District Commandant, Nainital that in case in future he is again found guilty of indiscipline, his services would be terminated without any notice. A typed copy of such undertaking is filed with the counter affidavit, however strangely enough neither it bears the signature of the petitioner nor the date has been mentioned in it. If it is assumed that such undertaking was given by the petitioner, it cannot be the basis for terminating his services without any notice or without assigning any reason in future.

In paragraph no. 10, the respondents have mentioned that 8 other persons were terminated, who later on reinstated on tendering apology. Paragraph no. 10 of the counter affidavit is quoted below:

10. *That the contents of para 11 of the writ petition as stated by the petitioner are erroneous and baseless and hence the same are emphatically denied. For the incident of 9.1.2004 in the Ardha Kumbh in addition to the petitioner 8 voluntary*

Home Guards were also terminated by the Meladhikari Home Guards in his office and they tendered apology in writing that they will not commit anything of such kind in future. The petitioner has neither ever realised the gravity of his misconduct nor he has approached the Divisional commandant in this connection and, therefore, in such circumstances the allegation of taking bribe is motivated and ahs absolutely no foundation whatsoever. For kind perusal of the Hon'ble Court copies of the individual applications of 8 Home Guards tendering apology for their misconduct and giving the assurance not to commit anything of such kind in future are jointly annexed herewith and marked as annexure no. CA – 3 to this affidavit.

Paragraph 10 of the counter affidavit shows that 8 other Home Guards tendered apology and they were reinstated in service but as the petitioner has not tendered apology his services were terminated. The contents of the counter affidavit clearly shows that neither any notice was given to the Home Guards nor they were called to furnish explanation. The misconduct alleged to have been done by the Home Guard has not been mentioned.

The language used in the alleged apology letters submitted by eight Home Guards, copies of which have been filed with the counter affidavit, is one and the same.

Although the appointment of the petitioner was voluntary and honorary in nature for a period of three years under Section 12 (1) of Home Guards Act 1963 but even then the same cannot be terminated ex parte without any notice or without assigning any reasons on the whims and glimpse of the concerned authority.

The petitioner has submitted that he has preferred representation and tendered apology for his reinstatement in Home Guard but the authorities concerned have not paid any heed to his request although 8 other persons were reinstated. Thus on the ground of parity, the petitioner is also entitled to reinstate in service.

In view of above, liberty is given to the petitioner to file a fresh representation and respondents are directed to consider his reinstatement in Home Guard service within one month after obtaining the certified copy of this order. The order-dated 23.1.2004 shall be subject to further order passed by the authority concerned.

Accordingly, writ petition is disposed of. No order as to costs.

Dated: 25.8.2006 **Rajesh Tandon, J.**

*Dhyani